Adzhaar bin Ahmad & Anor v Public Prosecutor

HIGH COURT (KANGAR) — CRIMINAL APPEAL NO 42–03–95
ALAUDDIN J
27 JANUARY 1996

Evidence *— Corroboration — Trap witness — Failure to corroborate evidence of trap witness — Whether judge adequately identified and evaluated corroborative evidence — Whether judge warned himself of danger of convicting on uncorroborated evidence of trap witness*

Criminal Law *— Prevention of Corruption Act 1961 — s 4(a) — Illegal gratification — Acquittal on soliciting charge but conviction on accepting charge — Whether evidence of soliciting charge wrongly considered in convicting on accepting charge — Whether prosecution led two sets of contradictory evidence which meant that the evidence was unreliable — Whether defence rebutted presumption in s 14 — Prevention of Corruption Act 1961 ss 4(a) & 14*

Criminal Procedure *— Judgment — Contents of — Whether a speaking judgment — Failure to discuss evidence and state reasons for findings — Whether failure to do so means that the judge had failed to consider the weight of evidence and probabilities of the case — Whether trial judge had applied his mind to the evidence produced — Criminal Procedure Code (FMS Cap 6) s 308*

The appellants were convicted by a sessions judge on a charge under s 4(a) of the Prevention of Corruption Act 1961 ('the Act') of accepting bribes of RM2,000 ('the accepting charge'), but acquitted of a second charge under s 3(a)(ii) of the Act of soliciting the bribes ('the soliciting charge'). They appealed against conviction on the following grounds: (i) that the judge erred in failing to consider whether there was corroboration of the evidence of PW6, whom he had found to be a 'trap witness', before accepting his evidence; (ii) that the judge misdirected himself in that, after disbelieving PW7's evidence and credibility in relation to the soliciting charge, he went on to consider certain events relating to the accepting charge and had thereby taken into account inadmissible and prejudicial evidence; (iii) that the prosecution had introduced two sets of evidence contradictory to each other, which the judge failed to consider; and (iv) that the judgment by the sessions judge was not a reasoned or speaking judgment and failed to adequately evaluate the evidence of the defence.

Held, allowing the appeals and setting aside the convictions and sentences with no retrial:

(1) Although the judge clearly recognized the need for corroboration of PW6's evidence, nowhere in his judgment had he identified and evaluated any corroborative evidence. The evidence of PW7, which was the only evidence which could have corroborated PW6's evidence, was rejected by the judge. Evidence in

corroboration must be independent and reliable testimony touching a material issue which implicates the accused. In addition to failing to identify and evaluate corroborative evidence, the judge also failed to adequately warn himself of the danger of convicting on the uncorroborated evidence of a trap witness (see pp 90G–I, 91A–B, D–E; *Dowse v A-G* [1961] MLJ 249, *Mohamed Mokhtar v PP* [1972] 1 MLJ 122, *Mohamed Taufik v PP* [1975] 1 MLJ 36 and *Chong Oi Choo v PP* [1986] 2 CLJ 232 followed). A B

(2) The judge seriously misdirected himself when he accepted the evidence under the soliciting charge to convict the appellants on the accepting charge (see p 92G; *Khoo Cheng Huat* v PP [1991] 1 MLJ 43 followed). C

(3) In introducing the pocket diary, the prosecution had clearly led two sets of evidence which contradicted each other. As such, this evidence was unreliable and the court was left with no evidence on which the conviction could be based. Accordingly, through the introduction of evidence by the prosecution, the appellants had successfully rebutted the presumption in s 14 of the Act. If the judge had considered and evaluated this evidence he would inevitably have come to the conclusion that the presumption was rebutted (see p 93C–E, 94A–C; *PP v Lee Eng Kooi* [1993] 2 MLJ 322 followed). D E

(4) The judgment of the sessions judge was inadequate and far from being a speaking judgment. He failed to discuss the evidence and the probabilities arising from the circumstances of the case. He failed to state the reasons for his findings and at times he made no findings of fact in respect of the evidence of witnesses. He had, in his judgment, failed to indicate that he had in fact applied his mind to the evidence produced (see p 94G). F

(5) A trial court is under a statutory duty under s 308 of the Criminal Procedure Code (FMS Cap 6) to transmit to the appellate court the grounds of decision which convey a reasoned judgment on the facts and the law, not merely the conclusion arrived at. The absence of reasons indicates the possibility that such vital consideration is such as the weight of evidence and the probabilities of the case may not have influenced the mental process of the judge in arriving at the ultimate finding. If the judge had properly and adequately considered the evidence for the defence as a whole he would certainly have found that the defence had raised a reasonable doubt as to the prosecution's case. The sessions judge was bound to view the whole of the evidence objectively and from all angles but he had failed to do so. The failure of the trial judge to direct himself correctly must be treated in the same way as a failure to direct a jury correctly (see pp 94H–I, 95H; *Balasingam v PP* [1959] MLJ 193; *Vijayaratnam v PP* [1962] MLJ 106 and *Gooi Loo Seng v PP* [1993] 2 MLJ 137 followed). G H I

A **[Bahasa Malaysia summary**

Perayu di sini disabitkan oleh hakim sesyen di atas pertuduhan di bawah s 4(a) Akta Pencegahan Rasuah 1961 ('Akta itu') iaitu penerimaan sogokan berjumlah RM2,000 ('pertuduhan penerimaan'), tetapi dibebaskan daripada pertuduhan kedua di bawah s 3(a)(ii) Akta itu iaitu pujukan-rayu meminta sogokan ('pertuduhan pujuk-rayu'). Mereka merayu terhadap sabitan di atas alasan-alasan berikut: (i) bahawa hakim perbicaraan salah apabila beliau gagal memberi perhatian sama ada terdapat sokongan kepada keterangan yang diberi oleh PW6, yang beliau dapati adalah seorang 'saksi perangkap', sebelum menerima keterangannya; (ii) bahawa hakim itu tersalah arah dirinya kerana, selepas tidak mempercayai keterangan PW7 dan kebolehpercayaannya berkenaan dengan pertuduhan pujuk-rayu itu, beliau terus memberi perhatian kepada beberapa kejadian yang berkaitan dengan pertuduhan penerimaan dan oleh itu telah mengambil kira keterangan yang tidak boleh diterima dan memudaratkan; (iii) bahawa pendakwaan telah mengemukakan dua set keterangan yang bercanggahan di antara satu sama lain, yang telah tidak dipertimbangkan oleh hakim; dan (iv) bahawa penghakiman oleh hakim sesyen bukan satu penghakiman yang beralasan dan berprinsip dan gagal untuk menilai dengan secukupnya keterangan pembelaan.

Diputuskan, membenarkan rayuan dan mengetepikan sabitan dan hukuman tanpa perbicaraan semula:

(1) Walaupun hakim mengetahui bahawa sokongan diperlukan untuk keterangan PW6, di dalam penghakimannya tidak dikenal pasti dan dinilai mana-mana keterangan sokongan. Keterangan PW7, yang merupakan satu-satunya keterangan yang mungkin dapat menyokong keterangan PW6, telah ditolak oleh hakim itu. Keterangan sokongan mestilah testimoni yang bebas dan boleh dipercayai yang menyentuh isu yang penting yang membabitkan tertuduh. Selain daripada kegagalan mengenal pasti dan menilai keterangan sokongan, hakim juga gagal memberikan amaran yang secukupnya kepada dirinya mengenai bahaya menyabit di atas keterangan saksi perangkap yang tidak disokong (lihat ms 90G–I, 91A–B, D–E; *Dowse v A-G* [1961] MLJ 249, *Mohamed Mokhtar v PP* [1972] 1 MLJ 122, *Mohamed Taufik v PP* [1975] 1 MLJ 36 dan *Chong Oi Choo v PP* [1986] 2 CLJ 232 diikut).

(2) Hakim telah tersalah arah dirinya secara serius semasa beliau menerima keterangan di bawah pertuduhan pujuk-rayu untuk menyabit perayu di atas pertuduhan penerimaan (lihat ms 92G; *Khoo Cheng Huat v PP* [1991] 1 MLJ 43 diikut).

(3) Dengan pengemukaan diari poket itu, pendakwaan telah membawa dua set keterangan yang bercanggahan. Demikian, keterangan ini tidak boleh dipercayai dan mahkamah tidak

mempunyai keterangan yang boleh mengasaskan sabitan itu. Dengan itu, melalui pengemukakan keterangan oleh pendakwaan, perayu telah berjaya mematahkan anggapan di bawah s 14 Akta itu. Jika hakim telah mengambil kira dan menilai keterangan ini beliau akan tentunya mencapai keputusan bahawa anggapan itu telah dipatahkan (lihat ms 93C–E, 94A–C; *PP v Lee Eng Kooi* [1993] 2 MLJ 322 diikut).

(4) Penghakiman hakim sesyen adalah tak memadai dan jauh dari penghakiman yang berprinsip. Beliau gagal membincangkan keterangan dan kemungkinan yang timbul daripada keadaan kes itu. Beliau gagal menyatakan sebab-sebab keputusannya dan adakalanya beliau tidak membuat keputusan fakta mengenai keterangan saksi-saksi. Beliau telah, dalam penghakimannya, gagal untuk menunjukkan bahawa beliau telah memikirkan mengenai keterangan yang diberi (lihat ms 94G).

(5) Mahkamah penghakiman berada di bawah kewajipan statutori mengikut s 308 Kanun Acara Jenayah (NMB Bab 6) untuk menghantar kepada mahkamah rayuan alasan keputusan yang menyampaikan penghakiman yang berdasarkan logik di atas fakta dan undang-undang, bukan hanya kesimpulan yang dicapai. Ketiadaan sebab-sebab menunjukkan kemungkinan bahawa pertimbangan yang penting seperti kekuatan keterangan dan kebarangkalian kes mungkin tidak mempengaruhi proses mental hakim dalam mencapai keputusan muktamad. Jika hakim telah dengan betulnya dan secukupnya menumpukan perhatian kepada keterangan pembelaan secara keseluruhannya, beliau sudah semestinya mendapati bahawa pembelaan telah membangkitkan keraguan yang munasabah terhadap kes pendakwa. Hakim sesyen terikat untuk melihat keseluruhan keterangan secara objektif dan dari semua segi tetapi beliau telah gagal membuat demikian. Kegagalan oleh hakim perbicaraan untuk mengarah dirinya dengan betul mesti disifatkan sama seperti kegagalan untuk mengarah juri dengan betul (lihat ms 94H–I, 95H; *Balasingam v PP* [1959] MLJ 193; *Vijayaratnam v PP* [1962] MLJ 106 dan *Gooi Loo Seng v PP* [1993] 2 MLJ 137 diikut).]

Notes

For cases on corroboration, see 7 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 526–620.

For cases on Prevention of Corruption Act 1961, see 4 *Mallal's Digest* (4th Ed) paras 1691–1709; [1989] Mallal's Digest 588–589; [1990] Mallal's Digest 460; [1991] Mallal's Digest 814–815.

For cases on contents of judgments, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1433–1449.

Cases referred to

Balasingam v PP [1959] MLJ 193
Chong Oi Choo v PP [1986] 2 CLJ 232
Dowse v A-G [1961] MLJ 249
Gooi Loo Seng v PP [1993] 2 MLJ 137
Khoo Cheng Huat v PP [1991] 1 MLJ 43
Mohamed Mokhtar v PP [1972] 1 MLJ 122
Mohamed Taufik v PP [1975] 1 MLJ 36
PP v Adetunji Adeleye Sule [1993] 2 MLJ 70
PP v Lee Eng Kooi [1993] 2 MLJ 322
PP v Mohamed Noor bin Jantan [1979] 2 MLJ 289
Vijayaratnam v PP [1962] MLJ 106

Legislation referred to

Criminal Procedure Code (FMS Cap 6) s 308
Prevention of Corruption Act 1961 ss 3(a)(ii), 4(a), 14

K Kumaraendran (*Kumar, Sitham & Co*) for the first appellant.
S Asamaley (*S Asamaley & Co*) for the second appellant.
Khairilazwar bin Khalil (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

Alauddin J: The appellants were tried in the Sessions Court, Kangar for charges under the Prevention of Corruption Act 1961 ('the Act').

The first charge against them was under s 4(a) of the Act, ie for accepting bribes of RM2,000. The second charge was under s 3(a)(ii) of the Act, ie for soliciting bribes of RM2,000. They were both acquitted and discharged on the second charge and convicted on the first charge. The first appellant was sentenced to one day's imprisonment and a fine of RM5,000 in default one year's imprisonment and ordered to pay a penalty of RM2,000. The second appellant was sentenced to one day's imprisonment and a fine of RM3,000 in default six months' imprisonment and was also ordered to pay a penalty of RM2,000.

They have now appealed against their conviction. There is also a cross-appeal by the learned deputy public prosecutor against sentence.

Before me the conviction was attacked on the following grounds:

(1) The learned sessions judge erred in law and in fact when having found the complainant ('PW6') to be a trap witness he failed to consider or consider adequately that before accepting PW6's evidence there ought to be corroboration.

(2) The learned sessions judge had seriously misdirected himself in that after disbelieving PW7's evidence and his credibility, he had gone on to consider events which took place on 29 January 1994 at the Kangar Court and Hospital as forming a series of transaction with

events happening at the Padang Besar Police Station and at the scene of the crime in the first charge and had thus taken into account irrelevant, inadmissible and gravely prejudicial evidence against the appellant. A

(3) The learned sessions judge did not consider or consider adequately that the contents of P15 A and B (pocket diary) clearly contradict the thrust of the prosecution case and further rebuts the presumption that may operate against the appellant. B

Alternatively, the learned sessions judge did not consider or consider adequately that the presumptions against the appellants who were charged under the Act do not necessarily require rebuttal by the defence evidence and that they may be rebutted by circumstances appearing in the prosecution evidence. C

(4) The learned sessions judge did not consider or consider adequately that the prosecution had led two sets of evidence which contradict with each other and thus was unreliable evidence.

(5) The learned sessions judge failed to give adequate and dispassionate consideration to the defence evidence including the appellants' evidence which was overwhelming and convincing, more than sufficient to raise a reasonable doubt. By reason of the aforesaid, the conviction of the appellants on the said charge is therefore not only against the weight of evidence but also unreasonable and cannot be supported having regard to the evidence. D E

In considering the first ground of appeal, it would be appropriate to refer to the judgment of the learned sessions judge at p 223 of the appeal record where he stated:

> Berdasarkan fakta kes ini, mahkamah mendapati bahawa SP6 bukanlah rakan sejenayah tetapi mahkamah memutuskan bahawa beliau adalah saksi perangkap. Walau bagaimanapun, mahkamah mesti berpuashati bahawa keterangan SP6 adalah betul dan disokong oleh kenyataan yang lain. F

There is no doubt that the learned sessions judge recognized the need for corroboration of PW6's evidence but had he, in his judgment, identified and evaluated the corroborative evidence? I had diligently searched for such evidence but nowhere could I find any. There was no mention whatsoever about the corroborative evidence in the judgment of the learned sessions judge. On the contrary, this is what he said in his judgment at para E, p 223 of the appeal record: G H

> Mahkamah telah meneliti keterangan SP7 dan secara keseluruhan berpendapat bahawa keterangan SP7 di dalam kes ini tidak dapat membantu keterangan SP6. Keterangan SP7 menyatakan kedua-dua orang dituduh ada meminta wang sebanyak RM2,000 daripada mereka di Hospital Kangar tidak dapat diterima memandangkan suasana di hospital itu di mana mereka digari dan bersama mereka ada empat lagi lelaki Melayu. I

It is obvious from his judgment that the learned sessions judge had rejected the evidence of PW7 which, to my mind, could be the only

A evidence to corroborate the evidence of PW6 in that the money paid to the appellant was corrupt money. The defence had never denied the receipt of the money but contended that it was paid to the appellant for the purpose of paying bail for PW6, the complainant. The learned sessions judge having rejected the evidence of PW7, there remains no other evidence that could corroborate the evident of PW6. In *Chong Oi Choo v PP* [1986] 2 B CLJ 232 it was held that evidence in corroboration must be independent and reliable testimony touching a material issue which implicates the accused. In the course of his judgment, Edgar Joseph Jr J (as he then was) quoted the words of Lord Radcliffe in *Dowse v A-G* [1961] MLJ 249 as follows at p 252:

C

> Their Lordships have no doubt that evidence to be corroborative, must be truly probative of the relevant issue, that is, it must positively implicate the accused person and positively show or tend to show the truth of the accomplice's story that the accused committed the offence. A fact which is indifferently consistent with the accomplice's story and the accused's denial of it is neutral and supplies no corroboration.

D

From the whole of the judgment of the learned sessions judge, it would appear that he had not only failed to identify and evaluate the corroborative evidence but he had also failed to adequately warn himself of the danger of convicting on the uncorroborated evidence of a 'trap witness'. (See *Mohamed Mokhtar v PP* [1972] 1 MLJ 122 and *Mohamed Taufik v PP* E 1975 1 MLJ 36.)

In order to understand the second ground of appeal, it would help to quote from the judgment of the learned sessions judge at p 226 of the appeal record:

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> Walaupun mahkamah memutuskan tidak ada prima facie case terhadap tuduhan kedua tetapi mahkamah tidak harus tidak mengendahkan keseluruhan keterangan berhubung dengan apa yang terjadi di Mahkamah Kangar dan hospital pada 29 Januari 1994 kerana ianya satu siri transaksi dengan kejadian yang berlaku di Balai Polis Padang Besar dan tempat kejadian seperti pertuduhan pada 30 Januari 1994.

G Against this finding, it was submitted on behalf of the appellants that having rejected the evidence on soliciting, thus resulting in the acquittal of both appellants on the second charge and there being no appeal by the learned deputy public prosecutor against that acquittal, it was a clear misdirection on the part of the learned sessions judge to have accepted that H evidence and convicted both the appellants on the first charge.

Although it was never stated by the learned sessions judge that he disbelieved PW6 (as submitted by the learned deputy public prosecutor), the cogent fact remained that he did acquit the appellants of the charge of soliciting the sum of RM2,000 upon the ground that it had not been proved. Upon the facts, that acquittal could only have been possible had I the learned sessions judge rejected the testimony of the complainant regarding the alleged soliciting of the RM2,000 by the appellants.

In the course of his judgment in *Khoo Cheng Huat v PP* [1991] 1 MLJ 42 (the facts of which are almost similar to the present case), Edgar Joseph Jr J (as he then was) at p 45 said:

> The question of critical substance therefore was whether, having regard to the particular circumstances of this case, the learned president was right in convicting the appellant of the charge of acceptance, having acquitted him of the charge of soliciting, the very sum he had allegedly accepted — an acquittal against which the prosecution had not appealed and the correctness of which they were bound to accept. The maxim *'res judicata pro veritate acceptur'* is no less applicable to criminal than to civil cases. (See *Sambasivam v PP* [1950] MLJ 145.)
>
> It is trite law that an appellant may have his conviction quashed on the ground that the verdict against him was inconsistent with his acquittal on another count, if it can be demonstrated that the inconsistency is such that it would not be safe to allow the verdict to stand. (See *R v Hunt* (1968) 52 Cr App R 580, per Lord Parker CJ.)
>
> It was, therefore, most material for the learned president to have recognized — but clearly she did not — that the appellant having been acquitted on the charge of soliciting, he was entitled to be taken as innocent on that charge. The learned president should then have gone on to warn herself — but clearly again she did not — that as no reliance could be placed on those parts of the evidence of the complainant and his wife which related to the charge of soliciting, of which he had to be taken as an innocent person, she had to consider to what extent she could rely upon those parts of the evidence of these witnesses in so far as it related to the charge of accepting.
>
> It seems to me that it was imperative for the learned president to have adopted this approach when evaluating the evidence both for the prosecution and the defence and that had she done so, I cannot confidently say that she would, inevitably, have convicted the appellant on the charge of accepting, having regard to the particular circumstances of this case
>
> In omitting, therefore, to direct herself as aforesaid, and in consequence, in omitting to reject the testimony of the complainant and his wife in its entirety, the learned president had misdirected herself seriously, on the facts, and on this ground alone the conviction cannot stand.

Similarly, in the present case, I hold that the learned sessions judge had seriously misdirected himself when he accepted the evidence under the soliciting charge to convict the appellants on the accepting charge.

As for the third and fourth grounds of appeal, it was contended by learned counsel for the appellants that by introducing P15A and B in evidence, the prosecution had led two sets of evidence which contradicted each other and thus was unreliable evidence. It was further contended that had the learned sessions judge considered the contents of P15A and B, he would have arrived at the inevitable conclusion that it had successfully contradicted the thrust of the prosecution case and rebutted the presumption raised against the appellants and thus resulting in there being no prima facie case established by the prosecution against the appellants. In failing to consider this evidence, the learned sessions judge had again misdirected himself by way of non-direction.

It would be proper at this stage to refer to the contents of P15A. At pp 60 and 61, the first appellant wrote:

29 JANUARI 1994 (SABTU)

1400 Terima arahan dari Insp Bakrin supaya keluarkan POL 43 kepada penama Lim Chen Joo KP A 0855600 dan Insp Bakrin juga mengarahkan saya supaya memberitahu kepada penama Lim Chen Joo KP N0 A 0855600 supaya beliau membawa wang jamin sebanyak RM2000 dan serahkan kepada Insp Bakrin bin Rusmin.

1545 Terima arahan dari Insp Bakrin mengarahkan saya menunggu penama Lim Chen Joo KP A 0855600 datang balik ke Padang Besar dan ambil wang jamin yang dibawa oleh penama Lim Chen Joo KP A 0855600 sebanyak RM2,000 kemudian serahkan kepada Insp Bakrin. Insp Bakrin berkata bahawa Lim Chen Joo KP A 0855600 akan datang di hadapan BSN Bank Padang Besar.

It must be observed that it was the defence's contention all along that the money was for the purpose of paying bail. Further, in my judgment, the manner in which the entries were made in the diary would deny any suggestion that they were afterthoughts. By introducing P15 A and B, the prosecution had without doubt, led two sets of evidence which were contradictory with each other. What then would be the effect of such contradiction? It would inevitably show that the evidence is unreliable and the result is that the court would be left with no trustworthy evidence upon which the conviction could be based. My finding finds support in the case of *PP v Lee Eng Kooi* [1993] 2 MLJ 322. The learned Vincent Ng JC (as he then was) in the course of his judgment at p 333 had this to say:

> The function of the court in a criminal trial is to find whether the person arraigned before it as the accused is guilty of the offence with which he is charged. For this purpose, the court scans the material on record to find whether there is any reliable and trustworthy evidence upon the basis of which it is possible to found the conviction of the accused and to hold that he is guilty of the offence with which he is charged. If in a case the prosecution leads two sets of evidence, each one of which contradicts and strikes at the other and shows it to be unreliable, the result would necessarily be that the court would be left with no reliable and trustworthy evidence upon which the conviction of the accused might be based. Inevitably, the accused would have the benefit of such a situation.

The prosecution has complete discretion as to what evidence it wants to use and what it does not want to use. For example it may not want to use the pocket diary (P15A) because it has other evidence to prove its case or it may be because it does not believe the contents to be true. But should the prosecution (as in this case) introduce the pocket diary then it is taken to rely on its contents as part of its case. (See *PP v Mohamed Noor bin Jantan* [1979] 2 MLJ 289.)

It is also trite law that statutory presumptions raised during the prosecution case may even be rebutted during the prosecution case itself. If the appellants here can raise credible evidence to rebut, on a balance of probability, the presumption under s 14 of the Act at the close of the prosecution case, then they are entitled to an acquittal.

In my judgment, the appellants, through the introduction of P15A and B by the prosecution, had successfully rebutted the presumption under s 14 of the Act. But I regret to say that the learned sessions judge had completely failed to consider and evaluate this evidence and had he done so he would inevitably have come to the conclusion that the presumption had been rebutted and the prosecution had failed to prove a prima facie case. It would, therefore, be wrong for the learned sessions judge to have called for the appellants to enter their defence on the first charge. Again, this was a clear misdirection by the learned sessions judge by way of non-direction.

The learned deputy public prosecutor had no reply to this submission by learned counsel for the appellants.

On the last ground of appeal, it was submitted by counsel for the appellants that the judgment by the learned sessions judge was not a reasoned or speaking judgment. The learned sessions judge had completely failed to evaluate the evidence of the defence. This view was shared by the learned deputy public prosecutor as evident from his reply to learned counsel's submission. As for me, after having painstakingly perused the judgment of the learned sessions judge, I find that I am in entire agreement with learned counsel and the deputy public prosecutor.

All that the learned sessions judge had to say before finding the appellants guilty and convicting them was this (see p 226 of the appeal record):

> Selepas meneliti semua keterangan, mahkamah memutuskan bahawa pendakwa telah berjaya membuktikan kes tanpa keraguan yang munasabah. Pembela tidak berjaya menimbulkan keraguan terhadap kes pendakwa.
>
> Oleh itu mahkamah mendapati kedua-dua orang kena tuduh bersalah atas tuduhan pertama.

With the greatest of respect to the learned sessions judge, I am compelled to say that his judgment is most inadequate and far from being a speaking judgment. He had failed to discuss the evidence and the probabilities arising from the circumstances of the case. He had failed to state the reasons for his findings. At times, he made no finding of facts in respect of the evidence of witnesses. In his judgment, he had failed to indicate that he had in fact applied his mind to the evidence produced.

In *Balasingam v PP* [1959] MLJ 193, it was held that an appeal is merely a continuation of proceedings by way of rehearing and litigants as well as the appellate court are entitled to know the reasons for the finding. The trial court is under a statutory duty under s 308 of the Criminal Procedure Code (FMS Cap 6) to transmit to the appellate court the grounds of decision which convey a reasoned judgment on the facts and the law not merely the conclusion arrived at. The absence of reasons indicates the possibility that such vital consideration as the weight of evidence and the probabilities of the case may not have influenced the mental process of the trial judge in arriving at the ultimate finding.

In the course of his judgment in *Vijayaratnam v PP* [1962] MLJ 106, Hashim J (as he then was) had this to say at p 107:

> The learned president in his grounds of judgment stated that he did not accept the accused's defence, but did not give his reasons for rejecting the defence except by saying that he believed the evidence of the police witness. In my opinion, the learned president ought to show in his grounds of judgment that the defence had been carefully considered and his reasons for rejecting it. This, in my opinion, has not been done.

In the course of the defence evidence, the cautioned statement of the first appellant ('D16') was produced. The cautioned statement was taken soon after the first appellant's arrest. On close scrutiny, I find that D16 substantially corroborates the first appellant's defence and is consistent with his evidence in court. But sad to say, the learned sessions judge had failed to direct his mind to this evidence.

It was held in *PP v Adetunji Adeleye Sule* [1993] 2 MLJ 70 that if, and when, the respondent gives evidence to the same effect as his cautioned statement, he is entitled to take advantage of it and to point out that it is consistent with his evidence.

Had the learned sessions judge considered the cautioned statement of the first appellant, he would certainly have found that it was consistent not only with his evidence but also his pocket diary (P15A) which was produced by the prosecution. Under these circumstances, I cannot safely say that the learned sessions judge would have come to any other conclusion than that the defence had raised a reasonable doubt. As the learned sessions judge had failed to do this, he had once again fallen into the error of misdirection by way of non-direction.

The submission by learned counsel for the second appellant was substantially similar to that of counsel for the first appellant. As a matter of fact, he had adopted a major part of the submission of counsel for the first appellant.

As for the learned deputy public prosecutor, his main submission was centered only on one point, ie that the money was received for a corrupt purpose. However, as I have said earlier, had the learned sessions judge properly and adequately considered the evidence for the defence as a whole he would certainly have found that the defence had raised a reasonable doubt on the prosecution's case.

The learned sessions judge was bound to view the whole of the evidence objectively and from all angles but he had failed to do so. The failure of the learned sessions judge to direct himself correctly must be treated in the same way as a failure to direct a jury correctly (see *Gooi Loo Seng v PP* [1993] 2 MLJ 137).

The cumulative effect of the various errors in the judgment of the learned sessions judge was that there has been a failure of justice and, in the circumstances, I am left with no choice but to allow the appeal. I do not think that a retrial would serve any purpose. As such, the conviction

and sentence of both appellants should be set aside. The fines and penalty if paid are to be refunded to the appellants.

The appeal by the learned deputy public prosecutor against sentence is dismissed.

Appeal allowed.

Reported by AP Kinnear